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STATE CAPITOL
PHOENIX, ARIZONA

April 18, 1971

DEPARTMENT OF LAW OPINION NO. 71-13 (R-41)

REQUESTED BY: THE HONORABLE THOMAS M. KNOLES
Arizona State Senator

- QUESTIONS:
1. Are the provisions of Article 2, Chapter 2, Title 35, Arizona Revised Statutes, applicable to the City of Flagstaff under its present Charter, adopted in 1958?
 2. If the answer to Question 1 is "Yes", may the City of Flagstaff exempt itself from such provisions by the adoption of an ordinance?

- ANSWERS:
1. Yes.
 2. No.

The Charter of the City of Flagstaff provides in Article VI, Section 1, entitled "Fiscal":

"The provisions of the Constitution and the Laws of the State as the same now exist or hereafter may be amended governing the budget, taxation, financial and fiscal powers of the City shall apply to the governing and conduct of the same in the City."

Article 2, Chapter 2, Title 35, Arizona Revised Statutes (A.R.S. §§ 35-321 through 35-325.20), establishes the procedure for the state and all subdivisions thereof to follow in the handling of public monies.

Inasmuch as the Charter of the City of Flagstaff specifically provides that state law governing financial and fiscal powers of cities applies to the City of Flagstaff, it is our opinion that the provisions of Article 2, Chapter 2, Title 35,

Arizona Revised Statutes, govern the handling of public monies by the City of Flagstaff.

For the reasons stated hereafter, our opinion is that Article 2, Chapter 2, Title 35, Arizona Revised Statutes, governs the handling of public monies by the City of Flagstaff irrespective of the provisions of the Charter of the City of Flagstaff or any ordinance which the City of Flagstaff Council may enact.

A.R.S. § 35-321 provides that said Article 2 applies to every city and town and all monies in the treasury of a city or town or coming lawfully into the possession or custody of the treasurer of a city or town.

In 1968 the Legislature said of Article 2, in A.R.S. § 35-321.02:

"It is the sense of this legislature that it is in the best interests of the state to recognize that public funds, having as their principal source withdrawals from banks in this state, should be equitably redistributed among such depositories in order to maintain the economy of the state and its respective communities."

The Arizona Supreme Court discussed the scope and meaning of said article at length in Valley National Bank of Phoenix v. First National Bank of Holbrook, 83 Ariz. 286, 320 P.2d 689 (1958), at 83 Ariz. 289-291:

"Chapter 119 [Arizona Session Laws 1956 (A.R.S. §§ 35-321 to 35-325.20)] deals with the deposit of public monies of the State of Arizona, counties and municipalities. The statute amended section 10-302 of the 1939 Code. Under the 1939 Code the specified custodians of public money were given authority to deposit the same in banks which had qualified as public depositories by securing deposits of public money with securities as

provided by section 10-303 of the 1939 Code. That law permitted the authorized officers to designate active and inactive depositories, but no interest was paid on such deposits by any depository. The amount to be deposited in any depository was entirely within the discretion of the various designated officials.

"Chapter 119, supra, retained the basic requirements that depositories must secure the deposits of public monies with the same identical securities as under the previous law, but sought to accomplish two major changes in the method of handling public monies. The principal objective was to obtain the payment of interest on portions of the public funds and this was done by providing that the authorities charged with handling the funds classify same into active and inactive deposits; to the end that the inactive deposits would contain monies not currently needed for operations of the state or political subdivisions, and that those inactive funds could be treated much the same as savings accounts, and would draw interest from the various depositories.

"The second major change was to eliminate the discretion of the public officials in placing the public funds in various banks, and to provide a mathematical formula by which the money should be allocated among all of the banks qualifying as public depositories.

"The statute designates a board of deposit of state funds, a board of deposit in each county for county funds, and a board of deposit in each city or town for these funds. The state board of deposit consists of the state treasurer, the governor and the

state auditor, and the board of supervisors and the board of trustees or the common council are designated as the board of deposit for the county or city funds. Any national bank with its principal place of business in Arizona, and any commercial bank or savings bank carrying federal deposit insurance, is eligible as a public depository, except that savings banks may not become a depository for active deposits. The branch offices of parent banks are on an equal basis with eligible banks in a county having no branches.

"The law provides that the board of deposit shall designate the public monies which shall be available for deposit as active deposits and as inactive deposits, and notify all banks eligible to receive such funds, and such banks are required to apply for such active and inactive funds as they desire to carry, with a statement certifying to amount of qualifying deposits; thereafter, awards are made by the board of deposit.

* * *

"All banks within the state are eligible to qualify as depositories for state funds; all banks within a county are eligible to qualify as depositories of funds in that county; and all banks within a town or municipality are eligible to qualify as depositories of funds of such town or municipality.

"Where the applications for county or city funds exceed the total inactive or active funds, an apportionment is then made among the eligible depositories in the proportion that the deposits of each bears to the total deposits of all.

"The statute further provides that inactive public deposits shall be evidenced by certificates of deposit having a maturity of six months from the date of issue. . . ."

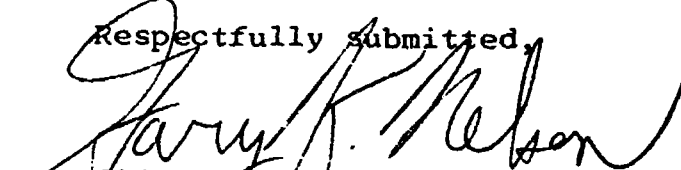
The Court continued in 83 Ariz. at 296:

". . . The legislature has always exercised, and rightly so, the power to provide for the handling and safekeeping of public revenue. It is certainly within legislative competence to provide some reasonable and uniform formula for distribution of public funds among eligible depositories. . . ."

It is our opinion from examining Article 2, Chapter 2, Title 35, Arizona Revised Statutes, and Valley National Bank of Phoenix v. First National Bank of Holbrook, supra, that said Article 2 is a general law adopted by the Legislature as a matter of statewide policy and which appropriates the field regarding the handling of public monies.

The Arizona Supreme Court in a number of cases has said that a general law enacted with regard to a matter of statewide concern, rather than one of local interest, supersedes any provision of a charter or ordinance of a home rule city which may be contrary to the general law. See State v. Jaastad, 43 Ariz. 458, 32 P.2d 799 (1934), and City of Phoenix v. Drinkwater, 46 Ariz. 470, 52 P.2d 1175 (1935), statute fixing minimum wages and maximum labor on public works; Keller v. State, 46 Ariz. 106, 47 P.2d 442 (1935), statute covering subject of reckless driving; Luhrs v. City of Phoenix, 52 Ariz. 438, 83 P.2d 283 (1938), statute pensioning policemen and fixing minimum wages for policemen and firemen; City of Phoenix v. Kidd, 54 Ariz. 75, 92 P.2d 513 (1939), and American-La France & Foamite Corporation (Pacific) v. City of Phoenix, 47 Ariz. 133, 54 P.2d 258 (1936), statute pertaining to making of annual budgets.

Respectfully submitted,


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The Attorney General